IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4070 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Mr.A.B. Borkar, for the Petitioners

CORAM : S.A.BOBDE, J.
DATED : 23RD JUNE, 2005

P.C.

. The petitioner has challenged the order below Exh.27 in Special Civil Suit NO.607 of 1998 rejecting the petitioners' application for directing the plaintiff to produce the following documents:-

a) Balance Sheet and profit & loss account for the period from 23-4-1966 to 31-7-1997.

b) Balance sheet & profit and loss account for the period from 1-4-1997 to 31-3-1998.

c) Account books for the year 1996, 1997, 1998.

d) Outward Gate pass registers for the

year 1996, 1997, 1998.

e) Inward Gate Pass registers for the period from 1996, 1997, 1998.

f) Table of material issued under Rule 57-F(3) of Excise Rule.

g) Registers of Excise duty maintained under Rule 57-F(3) of Excise Act for the year 1996 to 1998 and

h) Excise duty paid registered kept under rule 57(3) of Excise Duty Rule for the year 1996 to 1998.

The plaintiff has sued the defendants for return of 1290 Brake Drums which were allegedly given to the Defendants for processing. The defendants have denied that they have not returned the Brake Drums. The trial Court has upon consideration of the petitioners application declined to grant Items (a), (b) and (c) since the suit is not based on account books and the said books are, therefore, not relevant. It appears that the petitioners sought production of Registers and Gate passes maintained by the plaintiff in respect of the inward and

outward movement of goods in accordance with the Excise Rules. However, the Respondents made a statement before the Court that they do not maintain such Registers. In the circumstances the trial Court has declined production of the account books and the Registers of inward and outward gate pass. Undoubtedly the Court would be free to draw any inference from the plaintiff's statement that it does not maintain any registers as required by law if it is found that the plaintiff is required to do so. There is no need to interfere, however, with the impugned order since the application for production of these documents was made now in the year 2005 when the suit was filed in the year 1998. The petitioner shall be at liberty to raise such grounds as may be advised in accordance with law under Section 105 of the C.P.C. if the decision goes adverse to the petitioners. Petition dismissed.

(S.A. BOBDE, J.)